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COMMITTEE ON CRIME PREVENTION AND CONTROL
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Item 5 of the provisional agenda*

CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Addendum

Recommendations on item 5 (topic 2) of the provisional agenda for the Eighth Congress: Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures

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The following text is a revised version of the recommendations proposed by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, on topic 2: "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", held at Vienna from 30 May to 3 June 1988 (A/CONF.144/IPM.4). The recommendations were reviewed by the Committee on Crime Prevention and Control at its tenth session and endorsed by the Economic and Social Council in its resolution 1989/69 of 24 May 1989, paragraphs 5 and 11. The revised text reflects the comments of the Committee (E/1988/20, annex IV), as well as observations made at the five regional preparatory meetings for the Eighth Congress (A/CONF.144/RPM.1-5).

DRAFT RESOLUTION I

The management of criminal justice and the development of sentencing policies

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling that the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recommended that continued attention should be given to the improvement of criminal justice systems so as to enhance their responsiveness to changing conditions and requirements in society,

Taking into account the fact that the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ adopted by the Seventh Congress, emphasized that crime prevention and criminal justice should not be treated as isolated problems to be tackled by simplistic, fragmentary methods, but rather as complex and wide-ranging activities requiring systematic strategies and differentiated approaches,

Aware that the Seventh Congress, in its resolution 8 on criminal justice systems - development of guidelines for the training of criminal justice personnel, 3/ recommended that Member States should develop and implement adequate training programmes for criminal justice personnel and requested the Secretary-General to develop guidelines for the establishment of training programmes in all parts of the system for criminal justice personnel,

Mindful that the Seventh Congress, in its resolution 9 on the development of crime and criminal justice information and statistical systems, 3/ requested the Secretary-General to initiate work on the use of information systems in the administration of criminal justice and invited interested Member States to provide for proper measures to enhance the transfer of information within the agencies of the criminal justice system,

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1/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

Considering that the Seventh Congress, in its resolution 10 on the status of prisoners, 3/ bore in mind that the Standard Minimum Rules for the Treatment of Prisoners 4/ inspired the policies of Member States to the benefit of prisoners,

Taking into account Economic and Social Council resolution 1986/10, section XI, of 21 May 1986, in which, inter alia, the Council requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider questions concerning alternatives to imprisonment,

Convinced that criminal justice management is a matter of concern for States Members of the United Nations for a number of reasons, including the following:

(a) Only if the crimin ustice system is well managed can rational changes be made to improve t ituation;

(b) Inadequate management of the criminal justice system can result in certain practices, such as long delays before trial, that may create injustices for persons whose cases are being processed by the system;

(c) Inappropriate management can lead to inappropriate allocation of resources,

Emphasizing that the Standard Minimum Rules for the Treatment of Prisoners establishes a basis for considering issues related to the management of imprisonment,

Convinced that information systems are essential instruments of efficient management and that, in many circumstances, the computerization of such systems can enhance their overall effectiveness,

Bearing in mind, however, that there are both costs and dangers involved in almost every aspect of the computerization of a part of a complex organization,

Emphasizing that Member States can learn from successes and mistakes made in other jurisdictions and can help each other by sharing information concerning software and hardware,

Stressing that criminal law and the criminal justice process should be seen as instruments of last resort in dealing with wrongdoing in society,

Taking cognizance of the fact that in most countries imprisonment is the sanction that is the main focus of criminal legislation, even though it may not be imposed in many criminal cases,

Emphasizing that Member States should develop explicit sentencing policies that would have the effect of reducing levels of imprisonment world-wide, particularly in respect of relatively trivial types of crime,

Recognizing that successful measures for combating crime are, for the most part, to be found outside the sentencing process, that sentencing practices should be seen neither as a cause of current levels of crime nor as solutions

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4/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

to crime problems in the future, and that, although one of the goals of the criminal justice system as a whole is to reduce crime, the purpose of sentencing is to contribute to that goal by responding in a just and measured fashion to wrongdoing in society,

Recognizing also that a sentencing policy that accomplishes the aforesaid goal will contribute to the well-being of society by providing for sanctions that preserve the authority of the law and promote respect for it,

Recognizing further that sentencing is but one stage of the criminal justice system and that, similarly, imprisonment does not occur only as a result of a decision by a judge to sentence an offender,

Adopts the following recommendations for further action at the national, regional and international levels.

I. Management and training

1. Recommends that Member States should consider the following policies:

(a) Designing methods for measuring and projecting trends in criminality and in judicial practices and for evaluating the results of policy decisions, according to their specific circumstances;

(b) Within their legal frameworks, structuring the management of each part of the criminal justice system so that an information base for coherent policies can be developed and ensuring that the impact of decisions in one part of the system is considered in the light of their effects on others;

(c) Evaluating decisions within one part of the criminal justice system in the light of the goals not only of that part of the system, but also of the system as a whole;

(d) Acknowledging that staff training in the criminal justice system should aim at creating an understanding of the role of each person and each service in the context of the goals of the system as a whole;

(e) Encouraging staff training on an inter-service basis in order to promote awareness of the interdependence of different parts of the criminal justice system;

(f) Fostering, where practicable, the development of joint training programmes between Member States in order to facilitate the exchange of new ideas and perspectives on the training of criminal justice personnel and on solutions to management problems;

(g) Making efforts and, where possible, obtaining funding for Member States to exchange personnel for training programmes;

II. Management of imprisonment, especially in crisis situations

2. Also recommends that, in order to reinforce the application of the Standard Minimum Rules for the Treatment of Prisoners, 4/ to respond to the current and increasing crisis of overcrowding and other problems facing many prison administrations throughout the world and to promote accountable management, Member States should consider the following action:

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(a) Developing policies and strategies that reduce the use of custody and detention to a minimum. Such policies should be designed and evaluated in their own right, independently of the problem of overcrowding;

(b) Pursuing, where prison overcrowding nevertheless exists, practical measures such as amnesties, where these are socially acceptable, pardons or other measures specifically designed to alleviate the problem;

(c) Establishing policies and procedures that allow for judicial review and effective external control of prison administrative policies or practices, especially where there is evidence that the Standard Minimum Rules for the Treatment of Prisoners have not been followed;

(d) Drawing up specific operational standards for areas covered by the Standard Minimum Rules for the Treatment of Prisoners. Such standards should be expressed in quantitative terms where appropriate and should provide criteria against which the administration of prisons can be periodically evaluated;

(e) Making the operational standards referred to in subparagraph 2 (d) above readily accessible to all interested parties so that they can be used to evaluate prison operations;

(f) Supporting efforts by prison administrations to provide opportunities for all prisoners to be reintegrated into society, developing policies and procedures to achieve that goal, and making information on those policies publicly available;

(g) Ensuring that a person who has been released from prison shall be at no more of a disadvantage than any other member of society in terms of having access to benefits provided to the public;

3. Invites Member States to report periodically on their compliance with the Standard Minimum Rules for the Treatment of Prisoners. Such reports should be made public by the United Nations and should be accessible to all interested persons;

4. Requests the Secretary-General to allocate resources to assist Member States in accomplishing these tasks, as appropriate;

III. Management and computers

5. Recommends that Member States should consider the following action:

(a) Assessing, prior to making a decision on the computerization of their criminal justice systems, the costs and benefits of such a decision, including the associated indirect costs;

(b) Determining the type of data to be included in such an information system, since that will have a direct impact on the factors on which decisions may be based at a later stage;

(c) Monitoring carefully the installation procedures and the results of computerization to ensure that the explicitly stated original goals are being effectively met;

(d) Ensuring the protection of the rights of individuals (offenders, victims and others);

(e) Taking into account, if such computerization has already begun, the following points:

(i) How decisions on the nature and extent of information collected and the definition of terms or units used will facilitate the effective management of the criminal justice system as a whole;

(ii) How such decisions might affect the future potential for comparative analyses of different jurisdictions at the national and international levels;

6. Invites Member States that have not yet begun to computerize their criminal justice systems to take into account the recommendations of the European Seminar on Computerization of Criminal Justice Information Systems: Realities, Methods, Prospects and Effects, held at Popowo, Poland, from 18 to 22 May 1987; 5/

7. Requests the Secretary-General:

(a) To develop a data base of innovative programmes for the computerization of criminal justice systems that might be applicable to systems in other Member States;

(b) To facilitate the exchange of information, experience and personnel between jurisdictions that are in the process of computerizing some aspect of their criminal justice systems and those that are at a more advanced stage of that process;

(c) To disseminate information on relevant experiences in that area;

(d) To provide adequate resources for the completion of these tasks;

IV. The application of criminal law

8. Recommends that each Member State should consider the following action:

(a) Developing techniques for reducing to a minimum the intrusion of its criminal justice system into the lives of members of society;

(b) Creating a process that encourages prosecutors and other officials within the criminal justice system to support techniques of resolving disputes and conflicts, such as those involving mediation and reparation;

(c) Acknowledging the advisability of allowing an authority such as the prosecutor, where appropriate, to screen certain types of cases out of the criminal justice system instead of always proceeding with formal charges;

(d) Formulating guidelines for the equitable use of ways of dealing with wrongdoing that are less punitive than the criminal justice system, subject to suitable safeguards;

5/ Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, and Poland, Ministry of Justice, Computerization of Criminal Justice Information Systems: Realities, Methods, Prospects and Effects, HEUNI No. 12 (Helsinki, Government Printing Office, 1987).

V. Sentencing policy

9. Also recommends that Member States should establish structures and procedures, including effective communication with the judiciary and other relevant criminal justice institutions, to ensure that:

(a) Policies, including explicit sentencing principles, are developed that provide guidance to sentencing judges and facilitate an understanding by the offender, the victim and the general public of the case, of the sentencing process and of the decision;

(b) Such sentencing principles are formulated so that they can be used to assess the appropriateness of individual sentences;

(c) Sentencing practices are evaluated to establish whether they are fulfilling the purposes ascribed to them;

10. Further recommends that, in developing the structures and procedures referred to in paragraph 9 above, Member States should take into account the following points:

(a) The responsibility for the imposition of sentences in particular cases should rest solely with an impartial and independent judiciary and should not be subject to influence or interference by Governments or their executive agencies;

(b) Fair and coherent sentencing policies should be established and implemented with the support of the judiciary, the legislature and other interested parties and embodied in legislation as appropriate;

(c) Sentences should be no more onerous than necessary to express society's condemnation of the behaviour involved and to ensure the protection of society from the most dangerous offenders;

(d) A range of sanctions should be available to enable the sentencing judge to choose the most appropriate one, bearing in mind the following guidelines:

(i) Sentences involving imprisonment should be imposed only if it can be shown that there are reasonable grounds for believing that community sanctions would be inappropriate;

(ii) The choice between different sanctions of equivalent severity should be made in consideration of such factors as the likelihood of the offender being rehabilitated and the cost and benefits to other members of society and to society as a whole;

(e) Imprisonment should be used as a sanction of last resort;

(f) Only the most serious offences should be excluded from the application of community sanctions; and the full range of sanctions should be equally available for all but the most serious offences;

(g) Prison sanctions for special categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort should be made to avoid the extended use of imprisonment as a sanction for these categories.

VI. Ensuring fair treatment

11. Recommends that, in order to avoid the negative consequences of the premature application of a criminal sanction for persons not yet convicted of an offence, Member States should promote action with a view to achieving the following results:

(a) Reducing the time between the commencement of criminal proceedings and the final settlement of a case;

(b) Reducing to a minimum the number of persons committed to custody awaiting trial, in view of the general principle of the presumption of innocence. In particular, efforts should be made to enact legislation that has the effect of holding in custody before trial only persons for whom it can be shown that there are reasonable grounds for believing that they will not appear for trial, that they are likely to commit further serious offences or that they will seriously interfere with the administration of justice, or persons who should be held in custody because of other serious factors related to the charge;

(c) Ensuring that persons for whom a non-custodial sanction, such as a fine, is adjudicated are not subsequently imprisoned solely because they did not comply with the terms of the originally imposed sanction;

(d) Establishing practices or policies whereby all information and recommendations relevant to sentencing are made available to the sentencing judge. Such information could come from the defence, the prosecutor or an agent of the court (for example, in the form of a pre-sentence or social inquiry report);

12. Also recommends that Member States should promote policies and practices to ensure that sanctions are administered fairly, effectively and consistently, that information about the manner of their implementation is provided to sentencing judges and that judges are made aware of the nature, impact and cost of the sanctions available to them;

13. Further recommends that prisoners should be provided with work opportunities, compatible with their work experience and the prison régime, that special community programmes for released prisoners should be encouraged and that specific measures for the treatment and rehabilitation of recidivists should be introduced.

DRAFT RESOLUTION II

United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Universal Declaration of Human Rights 1/ and the International Covenant on Civil and Political Rights, 1/ as well as other international human rights instruments pertaining to the rights of persons in conflict with the law,

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1/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. A.

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners, 2/ adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the important contribution of those Rules to national policies and practices,

Recalling resolution 8 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 3/ on alternatives to imprisonment,

Recalling also resolution 16 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders 4/ on reduction of the prison population, alternatives to imprisonment, and social integration of offenders,

Recalling further Economic and Social Council resolution 1986/10 of 21 May 1986, section XI, on alternatives to imprisonment, in which the Secretary-General was requested to prepare a report on alternatives to imprisonment for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and to study that question with a view to the formulation of basic principles in that area, with the assistance of the regional institutes,

Recognizing the need to develop local, national, regional and international approaches and strategies in the field of non-institutional treatment of offenders and the need to formulate standard minimum rules, as emphasized in the report of the Committee on Crime Prevention and Control on its fourth session, concerning methods and ways likely to be most effective in preventing crime and improving the treatment of offenders, 5/

Convinced that alternatives to imprisonment can be an effective means of treating offenders within the community to the best advantage of both the offenders and society,

Aware that the restriction of liberty is justifiable only from the viewpoints of public safety, crime prevention, just retribution and deterrence and that the ultimate goal of the criminal justice system is the reintegration of the offender into society,

Emphasizing that the increasing prison population and prison overcrowding in many countries constitute factors that create difficulties for the proper implementation of the Standard Minimum Rules for the Treatment of Prisoners,

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2/ Ibid., sect. G.

3/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: Report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

4/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

5/ E/CN.5/536, annex.

Taking note with appreciation of the work accomplished by the Committee on Crime Prevention and Control, as well as the Interregional Preparatory Meeting on topic 2: "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures" and the regional preparatory meetings for the Eighth Congress,

Expressing its gratitude to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders for the work accomplished in the development of the Standard Minimum Rules for Non-Custodial Measures, as well as to the various intergovernmental and non-governmental organizations involved, in particular, the International Penal and Penitentiary Foundation for its contribution to the preparatory work,

1. Adopts the United Nations Standard Minimum Rules for Non-Custodial Measures, contained in the annex to the present resolution, and approves the recommendation of the Committee on Crime Prevention and Control that the Rules should be known as "the Tokyo Rules"; 6/

2. Recommends the Tokyo Rules for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Calls upon Member States to apply the Tokyo Rules in their policies and practice;

4. Invites Member States to bring the Tokyo Rules to the attention of law enforcement officials, prosecutors, judges, probation officers, lawyers, victims, offenders, social services and non-governmental organizations involved in the application of non-custodial measures, as well as members of the executive, the legislature and the general public;

5. Requests Member States to report on the implementation of the Tokyo Rules every five years, beginning in 1994;

6. Urges the regional commissions, the regional and interregional institutes in the field of the prevention of crime and the treatment of offenders, specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to be actively involved in the implementation of the Tokyo Rules;

7. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the implementation of the present resolution;

8. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Tokyo Rules, including their transmission to Governments, interested intergovernmental and non-governmental organizations and other parties concerned;

9. Also requests the Secretary-General to prepare every five years, beginning in 1994, a report for the Committee on Crime Prevention and Control on the implementation of the Tokyo Rules;

6/ A/CONF.144/IPM.4, chap. III, para. 73.

10. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Tokyo Rules and to report regularly thereon to the Committee on Crime Prevention and Control;

11. Requests that the present resolution be brought to the attention of all United Nations bodies concerned and be included in the United Nations publication entitled Human Rights: A Compilation of International Instruments.

Annex

UNITED NATIONS STANDARD MINIMUM RULES FOR NON-CUSTODIAL MEASURES (THE TOKYO RULES)

I. GENERAL PRINCIPLES

1. Fundamental aims

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the needs of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. The scope of non-custodial measures

2.1 The relevant provisions of these Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders".

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system shall provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community without resorting to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures introduced as substitutes to imprisonment shall not be used as alternatives to other non-custodial sanctions.

2.7 Non-custodial measures should be applied at the earliest feasible time.

2.8 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality and background of the offender.

3.3 Discretion by the competent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. Saving clause

4.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, a/ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, a/ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment b/ or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. PRE-TRIAL STAGE

5. Pre-trial dispositions

5.1 The police, the prosecution service or other agencies dealing with criminal cases should, where appropriate and compatible with their legal system, be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge, a set of established criteria shall be developed within each legal system.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

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a/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

b/ General Assembly resolution 43/73, annex.

III. TRIAL AND SENTENCING STAGE

7. Social inquiry reports

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain information on the social background of the offender and may include other circumstances relevant to the imposition of non-custodial measures. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a wide range of non-custodial sanctions, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing dispositions may include:

(a) Verbal sanctions, such as admonition, reprimand and warning;
(b) Conditional discharge;
(c) Status penalties;
(d) Economic sanctions and monetary penalties, such as fines and day-fines;
(e) Confiscation or an expropriation order;
(f) Restitution to the victim or a compensation order;
(g) Suspended or deferred sentence;
(h) Probation and judicial supervision;
(i) A community service order;
(j) Referral to an attendance centre;
(k) House arrest;
(l) Any other mode of non-institutional treatment.

IV. POST-SENTENCING STAGE

9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization as far as possible and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

(a) Furlough and half-way houses;
(b) Work or education release;
(c) Various forms of parole;
(d) Remission;
(e) Pardon.

9.3 The decision on post-sentencing dispositions shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. Supervision

10.1 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.2 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.3 Offenders shall be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. Duration

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. Conditions

12.1 The competent authority shall determine the conditions to be observed by the offender, taking into account both the needs of society and the needs and rights of the offender.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and of increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. Treatment process

13.1 Within the framework of a given non-custodial measure, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority should involve the community and social support systems, such as the family, neighbourhood, school, work-place and social and religious organizations, lay-persons and volunteers, in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. Discipline and breach of conditions

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. STAFF

15. Recruitment

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to co-operate in and co-ordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. Public understanding and co-operation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. Volunteers

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for necessary expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

20. Research and planning

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy makers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. Policy formulation and programme development

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be conducted to assess the objectives, functioning and effectiveness of non-custodial measures.

22. Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies (both governmental and non-governmental) in such fields as health, housing, education and labour, and the mass media.

23. International co-operation

23.1 Efforts shall be made to promote scientific co-operation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations regional and interregional institutes, in close collaboration with the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Agreement on the Transfer of Supervision of Foreign Offenders Who Have Been Conditionally Sentenced or Conditionally Released. c/

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c/ A/CONF.144/IPM.5.

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COMMITTEE ON CRIME PREVENTION AND CONTROL
Eleventh session
Vienna, 5-16 February 1990
Item 5 of the provisional agenda*

CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Addendum

Recommendations on item 5 (topic 3) of the provisional agenda for the Eighth Congress: Effective national and international action against: (a) organized crime; (b) terrorist criminal activities

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*E/AC.57/1990/1.

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1. An interregional preparatory meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 3: "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities" was held at Vienna from 14 to 18 March 1988 (A/CONF.144/IPM.2). The recommendations made at the meeting were reviewed at the five regional preparatory meetings and approved for further consideration and action by the Congress, further reviewed by the Committee on Crime Prevention and Control, at its tenth session, and endorsed by the Economic and Social Council in its resolution 1989/69 of 24 May 1989, paragraphs 5 and 11. The texts that follow reflect the comments made by the Committee, at its tenth session, 1/ as well as the observations made during the five regional preparatory meetings for the Eighth Congress (A/CONF.144/RPM.1-5).

2. With reference to the draft model treaty on mutual assistance in criminal matters, it will be recalled that a revised version had already been submitted, in the form of a conference room paper (E/AC.57/1988/CRP.4), to the Committee on Crime Prevention and Control, at its tenth session, which provided guidance concerning further follow-up, and recommended that the draft model treaty should be submitted to the Eighth Congress for finalization. 2/

3. In pursuance of the directives of the Committee, the draft model treaty was extensively circulated among government experts for their comments and suggestions, and the Secretariat held intensive consultations with representatives of Governments on the occasion of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, held at Vienna from 25 November to 20 December 1988. As a result of those consultations, a new revised draft was submitted to the five regional preparatory meetings for the Eighth Congress, held in 1989, and to the Seventh Joint Colloquium of the International Association of Penal Law, the International Society of Criminology, the International Society of Social Defence and the International Penal and Penitentiary Foundation, all of which voiced support for the draft model treaty and made a number of observations.

4. The draft model treaty was brought to the attention of representatives of Governments attending the Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies (HONLEA) 3/ at which it was recommended that all States should support the elaboration of a United Nations model bilateral treaty on mutual assistance consistent with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2), adopted in 1988. The draft model treaty was then finalized, taking into account the recommendations of a group of experts that met at Vienna in October 1989, on the occasion of the XIV International Congress on Penal Law.

1/ Official Records of the Economic and Social Council, 1988, Supplement No. 10 (E/1988/20) annex IV.

2/ Ibid., chap. I.

3/ "Development and promotion of more effective action against illicit drug trafficking through regional co-operation in drug law enforcement: Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies (Interregional HONLEA), Vienna, 11-15 September 1989 - report" (E/CN.7/1990/2).

5. In pursuance of the mandates contained in resolutions 1 and 23 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 4/ and in accordance with the recommendations of the above-mentioned meetings, the present text, as contained in draft resolution III below, represents the culmination of all these efforts.

6. Similar procedures were followed for the finalization of the draft model treaty on extradition, which was originally submitted to the Committee, at its tenth session, also in the form of a conference room paper (E/AC.57/1988/CRP.3), the revised version of which is contained in draft resolution IV below.

4/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

DRAFT RESOLUTION I

Prevention and control of organized crime

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recognizing that the growing threat of organized crime, with its highly destabilizing and corrupting influence on fundamental social, economic and political institutions, represents a challenge demanding accrued and more effective international co-operation,

Recalling that the Milan Plan of Action, 1/ adopted by consensus at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recommended that it was imperative to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime,

Recalling also that the Seventh Congress, in its resolution 1, 2/ recommended that the Committee on Crime Prevention and Control should be requested to develop a comprehensive framework of guidelines and standards that would assist Governments in the development of measures to deal with organized crime at the national, regional and international levels,

Recalling further that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action 1/ as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

Noting that the General Assembly in its resolutions 41/107, 42/59 and 43/99, of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council in its resolutions 1986/10 and

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. E.

1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Actior, 1/

Noting also that the Economic and Social Council, in its resolution 1989/70, of 24 May 1989, called upon Governments, international organizations and interested non-governmental organizations to co-operate with the Committee on Crime Prevention and Control in giving special attention to promoting international co-operation in combating organized crime,

Noting further that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action 1/ and requested the Eighth Congress, inter alia, to propose viable conrol measures aimed at eradicating the activities of organized crime,

1. Adopts the guidelines contained in the annex to the present resolution as valuable recommendations for national and international action against organized crime;

2. Urges Member States to give favourable consideration to their implementation both at the national and the international levels, as may be appropriate.

Annex

GUIDELINES FOR THE PREVENTION AND CONTROL OF ORGANIZED CRIME

A. National measures

Preventive strategies

1. Raising public awareness and mobilizing public support are important elements of any preventive action. Education and promotional programmes and the process of public exposure have been successful in changing community attitudes and in enlisting public support. Measures of this kind can help to counter public revenue fraud and can be further developed and utilized on a systematic basis by targeting areas of special social and economic harm to the community and by enlisting the co-operation of the mass media in playing a positive role.

2. Research into the structure of organized crime and the evaluation of the effectiveness of existing countermeasures should be encouraged, since it can contribute to the establishment of a more informed basis for prevention programmes. For example, research in relation to corruption, its causes, nature and effect, its links to organized crime and anti-corruption measures is a prerequisite to the development of preventive programmes.

3. Possible devices to prevent or minimize the impact of organized crime should be continuously explored. While the whole question of crime prevention is an underdeveloped area in many countries, specific measures in a number of spheres have been effective. Detailed programmes that are designed to place obstacles in the way of a potential offender, reduce opportunities for crime and make its commission more conspicuous should be encouraged. Fraud control programmes represent a significant and positive step in this direction. Other measures include risk analysis to assess vulnerability to fraud, control strategies in relation to such areas as systems and procedures, management and the supervision of staff, physical security, information and intelligence,

computers, investigative strategies and training programmes. The creation of anti-corruption agencies or similar mechanisms should also be pursued. Crime impact studies and the identification of criminogenic factors of new development programmes would provide opportunities for the adoption of remedial and preventive measures at the planning stage.

4. Improvements in the efficiency of law enforcement and criminal justice are important preventive strategies based on more efficient and fair processes that act as a deterrent to crime and strengthen guarantees of human rights. Planning processes designed to integrate and co-ordinate relevant criminal justice agencies that often operate independently of each other, as stressed in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, a/ will also serve as a deterrent to crime.

5. Better training to upgrade skills and professional qualifications of law enforcement and judicial personnel should be undertaken to improve effectiveness, consistency and fairness in national criminal justice systems. Regional and joint training programmes should be developed in order to exchange information on successful techniques and new technology.

6. The efforts of drug-producing countries aimed at the eradication of the illicit production and processing of drugs should be recognized and supported. In particular, developed countries should grant adequate technical and financial assistance for the implementation of crop substitution programmes. The latter should also increase their efforts to achieve a radical reduction in illicit drug demand and consumption within their national borders.

Criminal legislation

7. Legislation should be encouraged that defines new offences with respect to money laundering and organized fraud and the offence of opening and operating accounts under a false name. Computer crime is another area that requires consideration. In addition, there is a need for reform in civil, fiscal and regulatory legislation that relates to the control of organized crime. Information on significant innovations that have occurred in recent years should be widely shared through the United Nations, with a view to facilitating the development of a solid basis for the harmonization of criminal law dealing with organized crime.

8. In order to avoid the possibility of corrupt practices in developing countries, developed countries should adopt domestic legislation ensuring that the business ventures of their nationals in developing countries are, from the very outset, completely legitimate.

9. Forfeiture of the proceeds of crime represents one of the most significant recent developments. Important in this context are the following: provision for the freezing or withholding, and the confiscation or forfeiture, of property used in, or derived from, the commission of an offence; and orders for pecuniary penalties representing a court assessment of the monetary value of the benefit derived by the alleged offender from the commission of the

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a/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. B.

offence. Viable remedies that have been developed in several countries on those matters should be brought, in a systematic way, to the attention of other interested countries, with a view to their more widespread utilization.

Criminal investigation

10. Attention should be focused on new methods of criminal investigation and the techniques developed in various countries of "following the money trail". Important in this context are the following: orders by the competent authority for the production of, or the search for and seizure of, documents relevant to following the money trail; orders requiring financial institutions to provide information to facilitate the following of the money trail and requiring institutions to preserve records to maintain the money trail; monitoring orders directing a financial institution to provide information during specified periods on transactions conducted through accounts held by a particular person; and requirements to report suspect transactions, such as large-scale cash transactions, to the appropriate authority. Banks and financial institutions should not resort to the principle of secrecy once there exists a judicial order issued by the competent judiciary authority.

11. The use of telecommunications and electronic surveillance is also a relevant and effective procedure, subject to human rights considerations.

12. Schemes for the protection of witnesses against violence and intimidation are becoming increasingly important in the criminal investigation and trial process and in enforcement efforts against organized crime. These procedures involve the provision of protected accommodation and physical protection, relocation, monetary support and a new identity for the victims.

Law enforcement and criminal justice administration

13. Law enforcement plays a crucial role in programmes against organized crime. It is important to ensure that law enforcement agencies have adequate powers, subject to proper human rights safeguards. Consideration should be given to the necessity of establishing a specialized interdisciplinary agency to deal specifically with organized crime.

14. Major emphasis should also be placed on the application of technical and organizational measures designed to increase the effectiveness of the investigative and sentencing authorities, including prosecutors and the judiciary. Furthermore, courses on professional ethics should be incorporated into the curricula of law enforcement and judicial training institutions. Some of the instruments developed by the United Nations could be used for this purpose, such as the Basic Principles on the Independence of the Judiciary b/ and the Code of Conduct for Law Enforcement Officials. c/

B. International co-operation

15. The transnational dimensions of organized crime require the urgent development of new and effective co-operative arrangements on a more comprehensive basis. The exchange of information between relevant agencies of Member States is also an important activity that needs to be strengthened and developed further.

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b/ Ibid, sect. D.

c/ General Assembly resolution 34/169, annex.

16. Governments should vigorously support all initiatives by countries and international institutions to combat illicit drug-trafficking, and should warn others of the imminent danger represented by organized crime. All countries must be involved in combating illicit drug-trafficking on the basis of shared responsibility. In this respect, consistent and continuous global international interdiction efforts, combining the exchange of the necessary data and operational resources, should be encouraged and undertaken.

17. Model legislation for the forfeiture of assets from illegally acquired property should be developed and implemented.

18. Specific strategies and methods should be developed for erecting stronger barriers between legitimate financial markets and the market in illegally acquired capital, and co-operative arrangements applicable to offshore finance and to operations involving global electronic fund transfers should be devised, through the close co-ordination of the international organizations and agencies concerned.

19. Technical co-operation in its various forms, with expanded advisory services, should be strengthened in order to share common experiences and innovations and to assist countries in need. International, regional and subregional conferences bringing together members of the law enforcement, prosecution and judicial authorities should be encouraged.

20. Modern technological advances should be used in the area of passport and travel controls, and efforts should be encouraged to monitor and identify cars, boats and aircraft used in transnational theft or transfer, or for illicit trans-shipments.

21. Secure global, regional and national data bases containing law enforcement, financial and offenders' records should be established or expanded.

22. Mutual assistance, the transfer of criminal proceedings and the enforcement of criminal judgements, including confiscation and forfeiture of illegal assets, as well as extradition procedures, should receive priority attention.

23. Comparative research and data collection related to issues of transnational organized crime, its causes, its links to domestic instability and other forms of criminality, as well as its prevention and control, should be supported.

24. The United Nations regional and interregional institutes for crime prevention and control and the intergovernmental and non-governmental organizations concerned should give increased attention to the issue of organized crime.

25. The United Nations Development Programme and other funding agencies of the United Nations system, as well as Member States, should be urged to strengthen their support for national, regional and international programmes addressed to the prevention and control of organized crime.

DRAFT RESOLUTION II

Terrorist criminal activities

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Aware of the grave menace that national and international terrorist criminal activities pose to social and political stability and to the lives of countless human beings,

Concerned by the rapid internationalization of these criminal operations,

Convinced that the trend towards the internationalization of terrorist activities makes imperative a corresponding internationally co-ordinated response of global dimensions,

Recalling that the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, affirmed that priority should be given to combating terrorism in all its forms including, when appropriate, co-ordinated and concerted action by the international community,

Recalling also that the Seventh Congress, in its resolution 23, 2/ requested that the Committee on Crime Prevention and Control consider the development of recommendations for international action to strengthen law enforcement measures, including extradition procedures and other arrangements for legal assistance and co-operation, with respect to offences of a terrorist nature,

Noting that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action 1/ as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

Noting further that the General Assembly, in its resolutions 41/107, 42/59 and 43/99 of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council, in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action, 1/

Aware that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action 1/ and requested the Eighth Congress, inter alia, to propose viable control measures for combating terrorist criminal activities,

Recalling further the concern about, and condemnation of, terrorism expressed by the General Assembly in its resolutions 3034 (XXVII), 31/102, 32/147, 34/145, 36/109, 38/130, 40/61, 42/59 and 44/29 of 18 September 1972, 15 December 1976, 16 December 1977, 17 December 1979, 10 December 1981, 19 December 1983, 9 December 1985, 30 November 1987 and 4 December 1989, respectively,

1. Adopts the recommendations contained in the annex to the present resolution as a set of valuable measures for national and international concerted action against international terrorism;

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. E.

2. Urges Member States to give favourable consideration to the implementation of these recommendations at both the national and the international level.

Annex

MEASURES AGAINST INTERNATIONAL TERRORISM

A. Definition

1. Since the first study a/ of international terrorism was conducted by the United Nations in 1972, the international community has been unable to arrive at a universally agreed meaning of what is included in the term "international terrorism". Nor has it reached sufficient general agreement on the measures needed to prevent and control the harmful manifestations of acts of terrorist violence.

2. The need to have a specific definition of international terrorism is, however, of questionable value for the prevention and control of the manifestations of the phenomenon. A preferred approach is to identify conduct that the international community deems unacceptable, and that it agrees to prevent and control by developing effective means for the implementation and enforcement of measures, in accordance with established principles of international law. Consequently, instead of attempting to define the phenomenon in an abstract way, a list of concrete activities or actions that the international community considers unacceptable and that are, therefore, considered as terrorist conduct should be compiled.

3. Furthermore, the international community should understand better the underlying causes that bring about such conduct in order to develop measures for its prevention and control.

B. Identification of the problems

4. Existing international norms may not in certain areas be sufficient to control all forms and manifestations of terrorist violence. The following issues are of particular concern: the absence of a clear definition of innocent civilians; the limits of the use of force in connection with wars of national liberation and conflicts of a non-international character; the limits of the use of force by States in response to what they may perceive as constituting acts of terrorist violence; State policies and practices that may be considered by other States as constituting a violation of international treaty obligations; the absence of specific norms on State responsibility regarding the failure to carry out existing international obligations; the abuse of the privilege of diplomatic immunity and the diplomatic pouch; the absence of norms concerning the responsibility of States for acts not prohibited by inter-

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a/ "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: Study prepared by the Secretariat in accordance with the decision taken by the Sixth Committee at its 1314th meeting, on 27 September 1972" (A/C.6/418).

national law; the absence of international regulation and control of the traffic and trade in arms; the inadequacy of international mechanisms for the peaceful resolution of conflicts and for the enforcement of internationally protected human rights; the lack of universal acceptance of the principle of aut dedere aut iudicare; and the shortcomings of international co-operation in the effective and uniform prevention and control of all forms and manifestations of terrorist violence.

C. International co-operation for the effective and uniform prevention and control of terrorism

5. Effective measures for international co-operation in the prevention of terrorist violence should be developed at the international, regional and bilateral levels. These include: co-operation between law enforcement agencies, prosecution authorities and the judiciary; increasing integration and co-operation within the various agencies responsible for law enforcement and criminal justice, with due regard to fundamental human rights; inclusion of modalities of inter-State co-operation in penal matters at all levels of enforcement and criminal justice; increasing education and training of law enforcement personnel with regard to crime prevention and modalities of international co-operation in penal matters, including the development of specialized courses on international criminal law and comparative penal law and procedures, as a part of legal education as well as professional and judicial training; and the development of both general educational and public awareness programmes through the mass media in order to enlighten the public on the dangers of terrorist violence.

D. Jurisdiction

6. Greater uniformity in the laws and practices of States concerning both criminal and extraterritorial jurisdiction should be encouraged, while over-extension of territorial jurisdiction should be avoided in order to prevent unnecessary legal conflicts between States.

7. Jurisdictional priorities should be established giving territoriality the first priority, followed by other principles in accordance with existing international law.

E. Extradition

8. Extradition should be facilitated as one of the most effective procedures for implementing the principle of aut dedere aut iudicare, and States should endeavour to develop and implement effectively international extradition treaties, be they part of multilateral conventions, regional conventions or bilateral agreements.

9. The political offence exception should not be a bar to extradition for crimes of terrorist violence under existing international conventions, except in cases when the requested State decides to undertake prosecution of the requested person or to transfer the proceedings to another State to conduct the prosecution.

10. States are encouraged to rely on existing extradition provisions in multilateral treaties whenever there is an absence of bilateral treaties.

11. In view of the increasing number of multilateral and bilateral treaties, the efforts of the United Nations to elaborate a model treaty on extradition constitute a useful beginning. In addition, the United Nations could also

consider elaborating a multilateral convention on extradition to remove gaps and loopholes in existing treaties and current extradition procedures.

12. Lawful alternatives to extradition, such as deportation or voluntary return subject to appropriate judicial guarantees, should be encouraged.

F. Mutual assistance and co-operation

13. The prevention and control of terrorist violence depends on effective mutual co-operation and assistance between States in securing evidence with respect to the prosecution or extradition of the offenders.

14. States are encouraged to lend each other the widest possible mutual assistance and co-operation in penal matters, subject to respect for internationally recognized human rights, and to rely on the provisions of multilateral treaties and specific regional and bilateral agreements. To achieve this end, the model treaty on mutual assistance in criminal matters constitutes a basis for strengthened international co-operation.

G. Non-applicability of defence

15. Defence based on obedience to superior orders, or acts of State, or immunities accorded subsequent to the commission of the crime shall not apply with respect to persons who have violated international conventions prohibiting acts of terrorist violence.

H. Conduct of States

16. Resort to terrorist violence by States that by their conduct violate international law should be more effectively curbed by the international community, and the United Nations should develop mechanisms for the control of such conduct, particularly through the strengthening of United Nations machinery for the preservation of peace and security and the protection of human rights.

17. Measures by the international community to curb terrorism that is supported, carried out or acquiesced in by States should be encouraged.

I. Protection of targets of high vulnerability

18. A study concerning the development of a new international convention that would enhance the protection of targets that are particularly vulnerable, the destruction of which would cause great harm to populations or cause severe damage to society, such as hydroelectricity or nuclear facilities, should be undertaken.

19. Contemporary societies rely increasingly on various technological and scientific means for satisfying common needs, and such means may provide opportunities for terrorist attack, with possibly devastating consequences. The United Nations, in co-operation with the specialized agencies concerned, should convene a conference of experts to identify such highly vulnerable targets and to develop appropriate measures for their protection. The United Nations should assist any country that suffers from terrorism or from the presence of terrorist organizations on its territory to put an end to that phenomenon.

J. Control of weapons, ammunition and explosives

20. States should develop appropriate national legislation for the effective control of weapons, ammunition and explosives and other dangerous materials that find their way into the hands of persons who could use them for the purposes of terrorism.

21. International regulations on the transfer, import, export and storage of such objects should be developed so that customs and border controls can be harmonized to prevent their transnational movement, except for established lawful purposes.

K. Protection of victims

22. States should establish appropriate mechanisms for the protection, and introduce relevant legislation for the assistance, of victims of terrorism, in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. b/

23. International norms defining innocent civilians as protected targets should be elaborated in order to protect them from terrorist operations.

L. Protection of witnesses

24. States should adopt measures and policies aimed at the effective protection of witnesses of terrorist acts.

25. States with experience in the field of witness protection programmes should consider lending assistance to other States contemplating similar programmes.

M. Treatment of offenders

26. Among the aims of criminal law are deterrence, prevention and the resocialization of offenders, but such aims can seldom be achieved with respect to ideologically motivated offenders. It is therefore recommended that studies should be undertaken concerning the treatment of such offenders, that programmes should be designed for them during their imprisonment, and that alternative measures of correction and programmes oriented to social defence should be developed.

27. Consideration should be given to the establishment of a uniform standard of penalties to be imposed on terrorists in different countries in order to eliminate significant disparities.

28. Such offenders must be treated without discrimination and in accordance with internationally recognized human rights standards and norms, as enunciated in the Universal Declaration of Human Rights, c/ the International Convenant

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b/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. C.

c/ General Assembly resolution 217 A (III).

on Civil and Political Rights, d/ the Slavery Convention, e/ the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, f/ the Abolition of Forced Labour Convention, g/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment h/ and the Standard Minimum Rules for the Treatment of Prisoners. i/

N. Role of the mass media

29. States should consider the development of guidelines for the mass media or encourage the establishment of voluntary guidelines to control the following: sensationalizing and justifying terrorist violence; disseminating strategic information on potential targets; and disseminating tactical information while terrorist acts are taking place, thereby possibly endangering the lives of innocent civilians and law enforcement personnel or impeding effective law enforcement measures to prevent or control such acts and to apprehend the offenders. These guidelines are in no way intended to restrict the internationally recognized basic human right of freedom of speech and information or to encourage interference in the domestic affairs of other States.

O. Codification of international criminal law and creation of an international criminal court

30. International criminal law should be codified and the work of the International Law Commission on various aspects of codification should be encouraged, in co-operation with the Committee on Crime Prevention and Control.

31. The possibility of establishing a special penal jurisdiction within the International Court of Justice, or a separate international criminal court, should be considered. Such drafts as the 1951 and 1953 draft statutes for the establishment of an international criminal court and the 1980 draft statute for the establishment of an international jurisdiction to implement the International Convention on the Suppression and Punishment of the Crime of Apartheid j/ should be considered. Also, the United Nations should encourage States to explore seriously the possibility of establishing such an international court under the auspices of the Organization, in which grave international crimes, and particularly terrorism, could be brought to trial. This goal could be achieved by the application of the principle of universal jurisdiction to certain particularly harmful and/or hideous crimes.

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d/ General Assembly resolution 2200 A (XXI), annex.

e/ General Assembly resolution 794 (VIII).

f/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. F. 26.

g/ Ibid., sect. F. 28.

h/ General Assembly resolution 39/46, annex.

i/ Human Rights: ..., sect. G. 30.

j/ General Assembly resolution 3068 (XXVIII), annex.

P. Enhancing the effectiveness of international co-operation

32. The United Nations, in co-operation with specialized agencies such as the International Civil Aviation Organization, the International Maritime Organization, and the International Atomic Energy Agency, should prepare annual reports on compliance with existing international conventions, including detailed reporting on incidents and cases (arrest, prosecution, adjudication and sentencing), to be made available for international circulation.

33. States that are signatories to international conventions prohibiting terrorist violence are urged to ratify those conventions at the earliest opportunity and to take effective measures to enforce their provisions.

34. States that are not signatories to international conventions prohibiting terrorist violence are urged to accede to such conventions at the earliest opportunity and to take effective measures to enforce their provisions.

35. States are urged to sign and ratify the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, adopted by the conference of the International Maritime Organization, held at Rome in 1988, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted by the International Conference on Air Law, which was convened by the International Civil Aviation Organization at Montreal, from 9 to 24 February 1988.

36. The United Nations should develop ways and means of encouraging prevention policies, strategies and action by States to ensure the effective implementation of international conventions, including enhanced co-operation at the law enforcement, prosecution and judicial levels.

37. A system of reporting and monitoring acts of terrorist violence and the responses of States should be developed within the United Nations, and annual reports should be made and widely circulated to Member States.

38. The central role of the United Nations, and in particular of the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, should be strengthened in order to fulfil the above-mentioned objectives and other purposes of the Organization, including the preservation of peace, the strengthening of world order and the fight against crime under the rule of law.

DRAFT RESOLUTION III

Model Treaty on Mutual Assistance in Criminal Matters

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress on organized crime, 3/ in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling also resolution 23 of the Seventh Congress on criminal acts of a terrorist character, 3/ in which all States were called upon to take steps to strengthen co-operation particularly, inter alia, in the area of mutual assistance,

Recalling further the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 4/

Acknowledging the valuable contributions to the Model Treaty on Mutual Assistance in Criminal Matters that Governments, non-governmental organizations and individual experts have made, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned by the alarming escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for mutual assistance in criminal matters will greatly contribute to developing more effective international co-operation for the control of criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of the Model Treaty on Mutual Assistance in Criminal Matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

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2/ Ibid., sect. B.

3/ Ibid., sect. E.

4/ E/CONF.82/15 and Corr.2.

5/ General Assembly resolution 217 A (III).

6/ General Assembly resolution 2200 A (XXI), annex.

1. Adopts the Model Treaty on Mutual Assistance in Criminal Matters together with its Optional Protocol, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Mutual Assistance in Criminal Matters;

3. Urges all States to strengthen international co-operation and mutual assistance further in criminal justice;

4. Requests the Secretary-General to bring the present resolution, with the Model Treaty annexed thereto, to the attention of Governments;

5. Urges also Member States to inform the Secretariat periodically of efforts undertaken to establish mutual assistance arrangements in criminal matters;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field.

Annex

MODEL TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The _____ and the _____

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

ARTICLE 1

Scope of application a/

1. The Parties shall, in accordance with this Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the Requesting State.

2. Mutual assistance to be afforded in accordance with this Treaty may include:

(a) Taking evidence or statements from persons;

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a/ Additions to the scope of assistance to be provided can be considered bilaterally, such as provisions covering information on sentences passed on nationals of the Parties. Obviously, such assistance must be compatible with the law of the Requested State.

(b) Effecting service of judicial documents;

(c) Executing searches and seizures;

(d) Examining objects and sites;

(e) Providing information and evidentiary items;

(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. This Treaty does not apply to:

(a) The arrest or detention of any person with a view to the extradition of that person;

(b) The enforcement in the Requested State of criminal judgements imposed in the Requesting State except to the extent permitted by the law of the Requested State and the Optional Protocol to this Treaty;

(c) The transfer of persons in custody to serve sentences;

(d) The transfer of proceedings in criminal matters.

ARTICLE 2

Other arrangements b/

4. Unless the Parties decide otherwise, this Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

ARTICLE 3

Designation of competent authorities

5. Each Party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of this Treaty should be made or received.

ARTICLE 4

Refusal of assistance c/

6. Assistance may be refused if: d/

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b/ This article recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

c/ This article provides an illustrative list of the grounds for refusal.

d/ Some countries may wish to modify the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), requirements of shared concepts (e.g. double criminality, double jurisdiction, no lapse of time) or specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests.

(a) The Requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (ordre public) or other essential public interests;

(b) The offence is regarded by the Requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) The request relates to an offence that is subject to investigation or prosecution in the Requested State or the prosecution of which in the Requesting State would be incompatible with the Requested State's law on double jeopardy (ne bis in idem);

(e) The assistance requested requires the Requested State to carry out compulsory measures that are contrary to its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

7. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

8. The Requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the Requested State.

9. Before refusing a request or postponing its execution, the Requested State shall consider whether assistance may be granted subject to certain conditions. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

10. Reasons shall be given for any refusal or postponement of mutual assistance.

ARTICLE 5

Contents of requests e/

11. Requests for assistance shall include:

(a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

(b) The purpose of the request and a brief description of the assistance sought;

(c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;

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e/ This list can be reduced or expanded in bilateral negotiations.

(d) The name and address of the person to be served, where necessary;

(e) The reasons for and details of any particular procedure or requirement that the Requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;

(f) Specification of any time limit within which compliance with the request is desired;

(g) Such other information as is necessary for the proper execution of the request.

12. Requests, supporting documents and other communications made pursuant to this Treaty shall be accompanied by a translation into the language of the Requested State or another language acceptable to that State.

13. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

ARTICLE 6

Execution of requests f/

14. Subject to article 19, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the Requested State. In so far as it is not incompatible with its law and practice, the Requested State shall carry out the request in the manner specified by the Requesting State.

ARTICLE 7

Return of material to the Requested State

15. Any property, as well as original records or documents, handed over to the Requesting State under this Treaty shall be returned to the Requested State as soon as possible unless the latter waives its right of return thereof.

ARTICLE 8

Rule of speciality

16. The Requesting State shall not, without the consent of the Requested State, use or transfer information or evidence provided by the Requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under this Treaty.

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f/ More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the Requested State to inform promptly the Requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

ARTICLE 9

Protection of confidentiality g/

17. Upon request:

(a) The Requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the granting of such assistance. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The Requesting State shall keep confidential evidence and information provided by the Requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

ARTICLE 10

Service of documents h/

18. The Requested State shall effect service of documents that are transmitted to it for this purpose by the Requesting State.

19. A request to effect service of summonses shall be made to a Requested State not less than ... i/ days before the date on which the appearance of a person is required. In urgent cases, the Requested State may waive this requirement.

ARTICLE 11

Obtaining of evidence j/

20. The Requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements, of

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g/ Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

h/ More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired providing for service of documents by mail or other manner, and providing for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Requested State that service has been effected and stating the form and date of such service. One or other of these documents could be sent promptly to the Requesting State. The Requested State could, if the Requesting State so requests, state whether service has been effected in accordance with the law of the Requested State. If service could not be effected, the reasons could be communicated promptly by the Requested State to the Requesting State.

i/ Depending on travel distance and related arrangements.

j/ This article is concerned with the obtaining of evidence in judicial proceedings, the taking of a statement of a person by a less formal process and the production of items of evidence.

persons or require them to produce items of evidence for transmission to the Requesting State.

21. Upon request of the Requesting State, the parties to the relevant proceedings in the Requesting State, their legal representatives and representatives of the Requesting State may, subject to the laws and procedures of the Requested State, be present at the proceedings.

ARTICLE 12

Right or obligation to decline to give evidence

22. A person who is required to give evidence in the Requested or Requesting State may decline to give evidence where either:

(a) The law of the Requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the Requested State; or

(b) The law of the Requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the Requesting State.

23. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

ARTICLE 13

Availability of persons in custody to give evidence or to assist in investigations k/

24. Upon request of the Requesting State, and if the Requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the Requesting State to give evidence or to assist in the investigations.

25. While the person transferred is required to be held in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return that person in custody to the Requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

26. Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14.

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k/ In bilateral negotiations, provisions may also be introduced dealing with such matters as the modalities and time of restitution of evidence and the setting of a time limit for the presence of the person in custody in the Requesting State.

ARTICLE 14

Availability of other persons to give evidence or assist in investigations 1/

27. The Requesting State may request the assistance of the Requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the Requesting State.

28. The Requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations and shall inform the Requesting State of the reply of the person, if any. Where appropriate, the Requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

29. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the Requesting State.

30. Upon request, the Requested State may grant the person an advance, which shall be refunded by the Requesting State.

ARTICLE 15

Safe conduct m/

31. Subject to paragraph 32, where a person is in the Requesting State pursuant to a request made under articles 13 or 14:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the Requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the Requested State;

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

32. Paragraph 31 of this article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

1/ Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 29. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

m/ These provisions may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

33. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

ARTICLE 16

Provision of publicly available documents and other records n/

34. The Requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

35. The Requested State may provide copies of any other document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 17

Search and seizure o/

36. The Requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the Requesting State for
evidentiary purposes, provided that the rights of third parties are protected.

ARTICLE 18

Certification and authentication p/

37. Subject to national law and unless the Parties decide otherwise, a request for assistance and the supporting documents thereto, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

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n/ The question may arise whether this should be discretionary. This provision can be the subject of bilateral negotiations.

o/ Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

p/ The laws of some countries may require authentication before documents transmitted from other countries can be admitted in their courts. Original documents are not necessarily required. More detailed provisions relating to certification or authentication can be dealt with bilaterally.

ARTICLE 19

Costs q/

38. The ordinary costs of executing a request shall be borne by the Requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

ARTICLE 20

Consultation

39. The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

ARTICLE 21

Final provisions

40. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

41. This Treaty shall enter into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

42. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

43. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at _____ on _____ in the _____
and _____ languages (both) texts being equally authentic.
(all)

q/ More detailed provisions may be included, for example, the Requested State would meet the ordinary cost of fulfilling the request for assistance except that the Requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the Requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person while in the Requesting State pursuant to a request under articles 11, 13 or 14, paragraphs 29 and 30; and (c) the expenses associated with conveying custodial or escorting officers.

OPTIONAL PROTOCOL TO THE MODEL TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS CONCERNING THE PROCEEDS OF CRIME a/

1. In this Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of the crime alleged are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

3. In pursuance of a request made under paragraph 2 of this Protocol, the Requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where pursuant to paragraph 2 of this Protocol suspected proceeds of crime are found, the Requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting State.

5. The Requested State shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting State or take other appropriate action to secure the proceeds following a request by the Requesting State. b/

6. In the application of this Protocol, the rights of bona fide third parties shall be respected under the law of the Requested State.

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a/ This Optional Protocol is included on the ground that questions of forfeiture are conceptually different from, although closely related to, matters generally accepted as falling within the description of mutual assistance. However, States may wish to include these provisions in the text because of their importance in dealing with organized crime. Moreover, co-operation in forfeiting the proceeds of crime has now emerged as an exception to the general rule that States will not enforce the criminal judgements of other States. Provisions similar to those outlined in the Optional Protocol appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. An addition could, for example, be made to paragraph 4 providing that the Requested State shall, upon request, take such measures as are permitted by its law to require compliance with monitoring orders by financial institutions. Provision could be made for the sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

b/ The parties might consider widening the scope of the Optional Protocol by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at _____ on _____ in the _____
and _____ languages (both) texts being equally authentic.
(all)

DRAFT RESOLUTION IV

Model Treaty on Extradition

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Milan Plan of Action, 1/ adopted by consensus by the Seventh Congress and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also, the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress 3/ on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling also resolution 23 of the Seventh Congress on criminal acts of a terrorist character, 3/ in which all States were called upon to take steps to strengthen co-operation, inter alia, in the area of extradition,

Calling attention to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 4/

Acknowledging the valuable contributions of Governments, non-governmental organizations and individual experts, in particular the Government of Australia and the International Association of Penal Law,

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

4/ E/CONF.82/15 and Corr.2.

Gravely concerned by the alarming escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for extradition will greatly contribute to developing more effective international co-operation for the control of criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of the Model Treaty on Extradition as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. Adopts the Model Treaty on Extradition contained in the annex to this resolution as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Extradition annexed hereto;

3. Urges all States to strengthen international co-operation further in criminal justice;

4. Requests the Secretary-General to bring this resolution, with the attached Model Treaty, to the attention of Member States;

5. Urges also Member States to inform the Secretary-General periodically of efforts undertaken to establish extradition arrangements;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field.

5/ General Assembly resolution 217 A (III).

6/ General Assembly resolution 2200 A (XXI), annex.

Annex

MODEL TREATY ON EXTRADITION

The _____ and the _____,

Desirous of making more effective the co-operation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

ARTICLE 1

Obligation to extradite

1. Each Party agrees to extradite to the other, upon request and subject to the provisions of this Treaty, any person who is wanted in the Requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence. a/

ARTICLE 2

Extraditable offences

2. For the purposes of this Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

3. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as pre- sented by the Requesting State shall be taken into account.

4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the Requesting State. b/

5. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the conditions set out in paragraph 2 of this article, the Requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

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a/ Reference to the imposition of a sentence may not be necessary for all countries.

b/ Some countries may wish to omit this paragraph and provide an optional ground for refusal under article 4.

ARTICLE 3

Mandatory grounds for refusal

6. Extradition shall not be granted in any of the following circumstances:

(a) If the offence for which extradition is requested is regarded by the Requested State as an offence of a political nature. [Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, nor any other offence agreed by the Parties not to be an offence of a political character for the purposes of extradition.];

(b) If the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgement rendered against the person in the Requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty; c/

(f) If the person whose extradition is requested would be subjected in the Requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person would not be entitled to the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14; d/

(g) If the judgement of the Requesting State has been rendered *in absentia* and the convicted person has not had sufficient opportunity to arrange for his or her defence, or has not had, or will not have, the opportunity to have the case retried in his or her presence.

ARTICLE 4

Optional grounds for refusal

7. Extradition may be refused in any of the following circumstances:

(a) If the person whose extradition is requested is a national of the Requested State. Where extradition is refused on this ground, the Requested State shall, if the other State so requests and if permitted by its law, submit

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c/ Some countries may wish to make this an optional ground for refusal under article 4.

d/ General Assembly resolution 2200 A (XXI), annex.

the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(b) If the competent authorities of the Requested State have refrained from prosecuting the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the Requesting State, unless that State gives such assurance as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out; e/

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the Requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in whole or in part within that State. f/ Where extradition is refused on this ground, the Requested State shall, if the other State so requests and if permitted by its law, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the Requesting State by an extraordinary or ad hoc court or tribunal;

(h) If the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations.

ARTICLE 5

Channels of communication and required documents

8. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

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e/ Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence.

f/ Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its laws at the time of the commission of the offence.

9. A request for extradition shall be accompanied by the following:

(a) In all cases,

(i) As accurate a description as possible of the person sought, together with any other information that may help to establish that persons's identity and nationality;

(ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the relevant law as to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 9 (c) above, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

10. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State or in another language acceptable to that State.

ARTICLE 6

Simplified extradition procedure

11. The Requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents.

ARTICLE 7

Certification and authentication

12. Subject to national law and unless the Parties decide otherwise, a request for extradition and the supporting documents thereto, as well as documents or

other material supplied in response to such a request, shall not require certification or authentication. g/

ARTICLE 8

Additional information

13. If the Requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

ARTICLE 9

Provisional arrest

14. In case of urgency the Requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization (INTERPOL), by post or telegraph or by any other means affording a record in writing.

15. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 9 of article 5 authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence and a concise statement of the facts of the case.

16. The Requested State shall decide on the application in accordance with its law and communicate its decision to the Requesting State without delay.

17. The person arrested upon such an application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 9 of article 5, has not been received.

18. The release of the person pursuant to paragraph 17 of this article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

ARTICLE 10

Decision on the request

19. The Requested State shall deal with the request for extradition, provisional arrest, or transit pursuant to procedures provided by its own law, and shall promptly communicate its decision to the Requesting State.

20. Reasons shall be given for any complete or partial refusal of the request.

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g/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts.

ARTICLE 11

Surrender of the person

21. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the Requested State shall inform the Requesting State of the length of time for which the person sought was detained with a view to surrender.

22. The person shall be removed from the territory of the Requested State within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the Requested State may release the person and may refuse to extradite that person for the same offence.

23. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 22 of this article shall apply.

ARTICLE 12

Postponed or conditional surrender

24. The Requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such case the Requested State shall advise the Requesting State accordingly.

25. The Requested State may, instead of postponing surrender, temporarily surrender the person sought to the Requesting State in accordance with conditions to be determined between the Parties.

ARTICLE 13

Surrender of property

26. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.

27. The said property may, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition having been agreed to cannot be carried out.

28. When the said property is liable to seizure or confiscation in the Requested State, it may retain it or temporarily hand it over.

29. Where the law of the Requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the Requested State free of charge after the completion of the proceedings, if that State so requests.

ARTICLE 14

Rule of speciality

30. Subject to paragraph 32 of this article, a person extradited under this Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than under one of the following conditions:

(a) An offence for which extradition was granted;

(b) Any other offence in respect of which the Requested State consents. h/ Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with this Treaty. i/

31. A request for the consent of the Requested State under this article shall be accompanied by the documents mentioned in paragraph 9 of article 5 and a legal record of any statement made by the extradited person with respect to the offence.

32. Paragraph 30 of this article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting State after leaving it.

ARTICLE 15

Transit

33. Where a person is to be extradited to a Party from a third state through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

34. Upon receipt of such a request, which shall contain relevant information, the Requested State shall grant the request unless its essential interests would be prejudiced thereby. j/

35. During transit the State of transit shall ensure that the person may be held in custody.

36. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person

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h/ Some countries may wish to add, as a third case, explicit consent of the person.

i/ Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

j/ Some countries may wish to agree on other grounds for refusal, such as those related to the nature of the offence (e.g. political, fiscal, military) or to the status of the person (e.g. own nationals).

in custody for [48] hours, pending receipt of the transit request to be made in accordance with paragraph 33 of this article.

ARTICLE 16

Concurrent requests

37. If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

ARTICLE 17

Costs

38. The Requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

39. The Requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought. k/

40. The Requesting State shall bear the costs incurred in conveying the person from the territory of the Requested State.

ARTICLE 18

Final provisions

41. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

42. This Treaty shall enter into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

43. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

44. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at _____ on _____ in the _____
and _____ languages (both) texts being equally authentic.
(all)

k/ Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest.